

# SENATE . . . . . No. 02128

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## The Commonwealth of Massachusetts

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☐ SENATE, February 06, 2012  
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Senate, February 6, 2012 – Recommended new draft from the Senate committee on Ways and Means for Senate, No. 2034.

For the committee,

STEPHEN M. BREWER.  
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# SENATE . . . . . No. 02128

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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An Act further regulating the probate code and establishing a trust code.

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to further regulate the probate code and to establish a trust code, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

□

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 186 of the General Laws is hereby amended by striking out section  
2 1, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

3           Section 1. If land is demised for the term of 100 years or more, the term shall, so long as  
4 50 years thereof remain unexpired, be regarded as an estate in fee simple as to everything  
5 concerning the descent and devise thereof upon the decease of the owner, the sale thereof by  
6 personal representatives, guardians, conservators or trustees, the levy of execution thereon and  
7 the redemption thereof if mortgaged or taken on execution. Whoever holds as lessee or assignee  
8 under such a lease shall, so long as 50 years of the term remain unexpired, be regarded as a  
9 freeholder for all purposes.

SECTION 2. Section 2 of said chapter 186 is hereby repealed.

SECTION 3. Section 1-401 of chapter 190B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “pending”, in line 18, the following words: - or in a newspaper designated by the register of probate in a county identified by the court.

SECTION 4. Said section 1-401 of said chapter 190B, as so appearing, is hereby further amended by inserting after the word “date.”, in line 33, the following sentence:— If the objecting party is a respondent as defined in section 5-101, the respondent or the respondent’s appointed counsel shall file a written affidavit of objection to the proceeding, stating the specific facts and grounds upon which the objection is based within 30 days after the return date.

SECTION 5. Section 1-404 of said chapter 190B, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) If, in a formal proceeding involving trusts or estates of decedents, minors, protected persons or incapacitated persons and in judicially supervised settlements, or otherwise, a minor, a protected person, an incapacitated person or a person not ascertained or not in being may be or may become interested in any property, real or personal or, in the enforcement or defense of any legal rights, the court in which any action, petition or proceeding of any kind relative to or affecting any such estate or legal rights is pending may, upon the representation of any party thereto or of any person interested, appoint a suitable person to appear and act therein as guardian ad litem or next friend of such minor, protected person, incapacitated person or person not ascertained or not in being. A judgment, order or decree issued as a result of such

31 proceedings, following an appointment made under this subsection, shall be conclusive upon all  
32 persons for whom a guardian ad litem or next friend was appointed.

33         SECTION 6. Said section 1-404 of said chapter 190B, as so appearing, is hereby further  
34 amended by striking out the last sentence and inserting in place thereof the following sentence:-  
35 Unless the spouse, heir or devisee is under conservatorship or, if not under conservatorship, is  
36 under guardianship by someone other than the petitioner or is represented by someone other than  
37 the petitioner, the court shall appoint a guardian ad litem who shall be provided notice of all  
38 proceedings.

39         SECTION 7. Subsection (b) of section 2-114 of said chapter 190B, as so appearing, is  
40 hereby amended by adding the following sentence:- The court may decree that the rights of  
41 succession to property under this section, or under former section 7 of chapter 210, shall vest in  
42 an adopted individual as of the date of the filing of the petition for adoption.

43         SECTION 8. Section 2-603 of said chapter 190B, as so appearing, is hereby amended by  
44 striking out, in line 8, the words “by representation” and inserting in place thereof the following  
45 words:- per capita at each generation.

46         SECTION 9. Section 2-702 of said chapter 190B, as so appearing, is hereby amended by  
47 striking out, in lines 2 and 3, the words “except for purposes of part 3 of article VI [Uniform  
48 TOD Security Registration Act] and”.

49         SECTION 10. Said section 2-702 of said chapter 190B, as so appearing, is hereby further  
50 amended by striking out, in lines 7 to 9, inclusive, the words “and except for a security registered  
51 in beneficiary form (TOD) under part 3 of article VI, Uniform TOD Security Registration Act”.

SECTION 11. Said chapter 190B is hereby further amended by striking out section 2-706, as so appearing, and inserting in place thereof the following section:-

Section 2-706. [Life insurance; retirement plan; account with POD designation; transfer-on-death registration; deceased beneficiary.]

(a) If a beneficiary fails to survive the decedent and is a grandparent or a descendant of a grandparent, the following shall apply:

(1) If the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift shall be created in the beneficiary's surviving descendants. Such descendants shall take per capita at each generation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(2) If the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family", or a class described by language of similar import, a substitute gift shall be created in the deceased beneficiary or beneficiaries' surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent shall pass to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary shall take the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary shall take per capita at each generation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased

73 beneficiary” is a class member who failed to survive the decedent and left 1 or more surviving  
74 descendants.

75           (b)     (1) A payor shall be protected from liability in making payments under the terms  
76 of the beneficiary designation until the payor has received written notice of a claim to a  
77 substitute gift under this section. Payment made before the receipt of written notice of a claim to  
78 a substitute gift under this section shall discharge the payor, but not the recipient, from all claims  
79 for the amounts paid. A payor shall be liable for a payment made after the payor has received  
80 written notice of the claim. A recipient shall be liable for a payment received, whether or not  
81 written notice of the claim is given.

82           (2) The written notice of the claim shall be mailed to the payor’s main office or  
83 home by registered or certified mail, return receipt requested, or served upon the payor in the  
84 same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor  
85 may pay any amount owed by it to the court having jurisdiction of the probate proceedings  
86 relating to the decedent’s estate or, if no proceedings have been commenced, to the court having  
87 jurisdiction of probate proceedings relating to decedents’ estates located in the county of the  
88 decedent’s residence. The court shall hold the funds and, upon its determination under this  
89 section, shall order disbursement in accordance with the determination. Payment made to the  
90 court shall discharge the payor from all claims for the amounts paid.

91           (c)     (1) A person who purchases property for value and without notice, or who  
92 receives a payment or other item of property in partial or full satisfaction of a legally enforceable  
93 obligation, shall not be obligated under this section to return the payment, item of property or  
94 benefit nor shall such person be liable under this section for the amount of the payment or the

95 value of the item of property or benefit; provided, however, that a person who, not for value,  
96 receives a payment, item of property or any other benefit to which such person is not entitled  
97 under this section shall be obligated to return the payment, item of property or benefit or shall be  
98 personally liable for the amount of the payment or the value of the item of property or benefit to  
99 the person who is entitled to it under this section.

100 (2) If this section or any part of this section is preempted by federal law with  
101 respect to a payment, an item of property or any other benefit covered by this section, a person  
102 who, not for value, receives the payment, item of property or any other benefit to which such  
103 person is not entitled under this section shall be obligated to return the payment, item of property  
104 or benefit or shall be personally liable for the amount of the payment or the value of the item of  
105 property or benefit to the person who would have been entitled to it were this section, or part of  
106 this section, not so preempted.

107 SECTION 12. Said chapter 190B is hereby further amended by striking out section 2-  
108 707, as so appearing, and inserting in place thereof the following section:-

109 Section 2-707. [Survivorship with respect to future interests under terms of trust;  
110 substitute takers.]

111 (a) If an instrument is silent on the requirement of survivorship, a future interest under the  
112 terms of a trust shall be contingent on the beneficiary surviving the distribution date. In that case,  
113 if a beneficiary of a future interest under the terms of a trust fails to survive the distribution date,  
114 the following shall apply:

115 (1) If the future interest is not in the form of a class gift and the deceased  
116 beneficiary leaves surviving descendants, a substitute gift shall be created in the beneficiary's

117 surviving descendants. Such descendants shall take per capita at each generation the property to  
118 which the beneficiary would have been entitled had the beneficiary survived the distribution  
119 date.

120           (2) If the future interest is in the form of a class gift, other than a future interest to  
121 “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives” or “family”, or a  
122 class described by language of similar import, a substitute gift shall be created in the deceased  
123 beneficiary or beneficiaries’ surviving descendants. The property to which the beneficiaries  
124 would have been entitled had all of the beneficiaries survived the distribution date shall pass to  
125 the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each  
126 surviving beneficiary shall take the share to which the surviving beneficiary would have been  
127 entitled had the deceased beneficiaries survived the distribution date. Each deceased  
128 beneficiary’s surviving descendants who are substituted for the deceased beneficiary take per  
129 capita at each generation the share to which the deceased beneficiary would have been entitled  
130 had the deceased beneficiary survived the distribution date. For the purposes of this paragraph,  
131 “deceased beneficiary” shall mean a class member who failed to survive the distribution date and  
132 left 1 or more surviving descendants.

133           (b) If, after the application of subsection (a), there is no surviving taker, the property  
134 shall pass in the following order:

135           (1) if the trust was created in a nonresiduary devise in the transferor’s will or in  
136 a codicil to the transferor’s will, the property shall pass under the residuary clause in the  
137 transferor’s will, For purposes of this section, a residuary clause shall be treated as creating a  
138 future interest under the terms of a trust;



139 (2) if no taker is produced by the application of clause (1), the property shall  
140 pass to the transferor's heirs under section 2-711.

141 SECTION 13. Section 2-801 of said chapter 190B, as so appearing, is hereby amended  
142 by striking out subsection (j) and inserting in place thereof the following subsection:-

143 (j) Except for subsection (h), this section shall not abridge the right of any person to  
144 disclaim, waive, release, renounce or abandon any interest in property under any other statute or  
145 rule of law.

146 SECTION 14. Said chapter 190B, is hereby further amended by striking out section 3-  
147 108, as so appearing, and inserting in place thereof the following section:-

148 Section 3-108. [Probate, testacy and appointment proceedings; ultimate time limit.]

149 No informal probate or appointment proceeding or formal testacy or appointment  
150 proceeding, other than a proceeding to probate a will previously probated at the testator's  
151 domicile and appointment proceedings relating to an estate in which there has been a prior  
152 appointment, may be commenced more than 3 years after the decedent's death, except that: (1)  
153 if a previous proceeding was dismissed because of doubt relative to the fact of the decedent's  
154 death, then appropriate probate, appointment or testacy proceedings may be maintained at any  
155 time thereafter upon a finding that the decedent's death occurred prior to the initiation of the  
156 previous proceeding and the applicant or petitioner has not unduly delayed initiating the  
157 subsequent proceeding; (2) appropriate probate, appointment or testacy proceedings may be  
158 maintained relative to the estate of an absent, disappeared or missing person at any time within 3  
159 years after the death of the person may be established; (3) a proceeding to contest an informally  
160 probated will and to secure appointment of the person with legal priority for appointment in the

161 event the contest is successful, may be commenced within the later of 12 months from the  
162 informal probate or 3 years from the decedent's death; (4) an informal appointment or a formal  
163 testacy or appointment proceeding may be commenced thereafter if no proceedings relative to  
164 the succession or estate administration has occurred within the 3 year period after the decedent's  
165 death, but the personal representative shall have no right to possess estate assets as provided in  
166 section 3-709 beyond that necessary to confirm title thereto in the successors to the estate and  
167 claims other than expenses of administration shall not be presented against the estate; and (5) a  
168 formal testacy proceeding may be commenced at any time after 3 years from the decedent's  
169 death for the purpose of establishing an instrument to direct or control the ownership of property  
170 passing or distributable after the decedent's death from one other than the decedent when the  
171 property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a  
172 part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the  
173 decedent's will. These limitations shall not apply to proceedings to construe probated wills or to  
174 determine heirs of an intestate. In cases under clauses (1) or (2), the date on which a testacy or  
175 appointment proceeding is properly commenced shall be deemed to be the date of the decedent's  
176 death for purposes of other limitations provisions of this chapter which relate to the date of  
177 death.

178       SECTION 15.   Section 3-203 of said chapter 190B, is hereby amended by striking out  
179 subsection (e), as so appearing, and inserting in place thereof the following subsection:-

180       (e) Appointment of a person with priority, a person who is nominated under subsection  
181 (c), or a person whose entitlement to appointment results from renunciation by another person  
182 with priority may be made in either formal or informal proceedings. Before formal appointment  
183 of one without priority, the court shall determine that those having priority, although provided

184 notice of the proceedings, failed to request appointment or to nominate another for appointment  
185 and that administration is necessary.

186 SECTION 16. Section 3-301 of said chapter 190B, as so appearing, is hereby amended  
187 by striking out, in line 69, the words “section 3-610(c)” and inserting in place thereof the  
188 following words:- section 3-610.

189 SECTION 17. Said section 3-301 of said chapter 190B, as so appearing, is hereby further  
190 amended by striking out, in line 73, the words “and describe the priority of the petitioner” and  
191 inserting in place thereof the following words:- describe the priority of the nominee.

192 SECTION 18. Section 3-605 of said chapter 190B, as so appearing, is hereby amended  
193 by striking out the first 3 sentences and inserting in place thereof the following 3 sentences:-  
194 Any person apparently having an interest in the estate worth in excess of \$5000 or any creditor  
195 having a claim in excess of \$5000, may make a written demand that a personal representative  
196 give sureties on the bond. The demand shall be filed with the court and a copy mailed to the  
197 personal representative if appointment and qualification have occurred. Thereupon, sureties  
198 shall be required but such requirement shall cease if the person demanding sureties ceases to be  
199 interested in the estate or if sureties are excused under section 3-604.

200 SECTION 19. Section 3-606 of said chapter 190B, as so appearing, is hereby amended  
201 by striking out, in line 32, the words “section 7-304” and inserting in place thereof the following  
202 words:- section 702 of chapter 203E.

203 SECTION 20. Said chapter 190B, is hereby further amended by striking out section 3-  
204 610, as so appearing, and inserting in place thereof the following section:-

Section 3-610. [Resignation by personal representative.]

A personal representative may resign the personal representative's position by filing a written statement of resignation with the court after having provided at least 15 days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation shall be ineffective as a termination of appointment and shall be effective only upon the appointment and qualification of a successor representative and delivery of the assets to such successor representative.

SECTION 21. Section 3-617 of said chapter 190B, as so appearing, is hereby amended by adding the following subsection:-

(c) Unless otherwise ordered by the court, the authority of any personal representative previously appointed by the court or magistrate shall be suspended for as long as a special personal representative has authority.

SECTION 22. Said chapter 190B is hereby further amended by striking out section 3-706, as so appearing, and inserting in place thereof the following section:-

Section 3-706. [Duty of personal representative; inventory and appraisement.]

(a) Within 3 months after appointment, a personal representative, who is not a successor to another representative, shall prepare an inventory of the property owned by the decedent at the time of death, listing it with reasonable detail and indicating the fair market value of each listed item as of the date of death, and the type and amount of any encumbrance that may exist with reference to any item.

226 (b) Within 3 months after appointment, a successor personal representative shall prepare  
227 an inventory of the property of the estate, listing it with reasonable detail and indicating the fair  
228 market value of each listed item as of the date of the successor personal representative's  
229 appointment, and the type and amount of any encumbrance that may exist with reference to any  
230 item.

231 (c) The personal representative shall file with the court, or mail to all interested persons  
232 whose addresses are reasonably available, a copy of the inventory. The personal representative  
233 may also file the original of the inventory with the court.

234 SECTION 23. Section 3-1201 of said chapter 190B, as so appearing, is hereby amended  
235 by striking out, in line 1, the words "an inhabitant of" and inserting in place thereof the  
236 following words:- a person domiciled in.

237 SECTION 24. Section 5-101 of said chapter 190B, as so appearing, is hereby amended  
238 by inserting after the definition of "Protective proceeding" the following definition:-

239 (23.5) "Respondent", an individual for whom the appointment of a guardian or  
240 conservator or other protective order is sought.

241 SECTION 25. Section 5-105 of said chapter 190B, as so appearing, is hereby amended  
242 by striking out, in line 12, the word "of", the second time it appears.

243 SECTION 26. Subsection (a) of section 5-106 of said chapter 190B, as so appearing, is  
244 hereby amended by striking out the third sentence and inserting in place thereof the following  
245 sentence:- Counsel for any indigent ward, incapacitated person or person to be protected shall be  
246 compensated by the commonwealth or the petitioner as the court may order.

247           SECTION 27. Section 5-107 of said chapter 190B, as so appearing, is hereby amended  
248 by striking out, in lines 5, 7 and 11 and in lines 12 and 13, the words “ill person” and inserting in  
249 place thereof, in each instance, the following words:- protected person.

250           SECTION 28. Section 5-204 of said chapter 190B, as so appearing, is hereby amended  
251 by striking out, in lines 45 and 46, the words “over the age of 14 years” and inserting in place  
252 thereof the following words:- 14 or more years of age.

253           SECTION 29. Section 5-206 of said chapter 190B, as so appearing, is hereby amended  
254 by inserting after the words “A minor”, in line 3, the following words:- 14 or more years of age.

255           SECTION 30. Section 5-303 of said chapter 190B, as so appearing, is hereby amended  
256 by striking out, in line 44, the word “attach” and inserting in place thereof the following words:-  
257 “file with the petition”.

258           SECTION 31. Said section 5-303 of said chapter 190B, as so appearing, is hereby further  
259 amended by striking out, in line 66, the word “physician” and inserting in place thereof the  
260 following words:- registered physician, certified psychiatric nurse clinical specialist, nurse  
261 practitioner.

262           SECTION 32. Said section 5-303 of said chapter 190B, as so appearing, is hereby further  
263 amended by striking out subsection (e) and inserting in place thereof the following 2  
264 subsections:-

265           (e) The court may require additional medical or psychological testimony as to the mental  
266 and physical condition of the person alleged to be incapacitated or disabled and may require that

267 such person submit to examination. The court may also appoint 1 or more persons, expert in  
268 incapacity or disability, to examine such person and report the conclusions thereof to the court.

269 (f) Reasonable expenses incurred in any examination conducted pursuant to this section  
270 shall be paid by the petitioner, the estate of the person alleged to be incapacitated or by the  
271 commonwealth as the court may determine.

272 SECTION 33. Section 5-304 of said chapter 190B, as so appearing, is hereby amended  
273 by striking out, in lines 4 and 5, the words “, and if notice is required in a proceeding for  
274 appointment of a temporary guardian or temporary conservator”.

275 SECTION 34. Said section 5-304 of said chapter 190B, as so appearing, is hereby further  
276 amended by striking out, in line 8, the words “and his” and inserting in place thereof the  
277 following words:- , if 14 or more years of age, and the person’s.

278 SECTION 35. Section 5-305 of said chapter 190B, as so appearing, is hereby amended  
279 by striking out, in lines 9 to 11, inclusive, the words “by will of a deceased spouse or by other  
280 writing signed by the spouse and attested by at least 2 witnesses” and inserting in place thereof  
281 the following words:- pursuant to subsection (b) of section 5-301.

282 SECTION 36. Subsection (a) of section 5-306A of said chapter 190B, as so appearing, is  
283 hereby amended by adding the following sentence:- When approving and authorizing an  
284 antipsychotic medication treatment plan by order or decree, the court shall consider the  
285 testimony or affidavit of a licensed physician or certified psychiatric nurse clinical specialist  
286 regarding such plan.

287           SECTION 37. Subsection (c) of said section 5-306A of said chapter 190B, as so  
288 appearing, is hereby amended by inserting after the word “the”, in line 29, the following words:-  
289 minor’s or.

290           SECTION 38. Said subsection (c) of said section 5-306A of said chapter 190B, as so  
291 appearing, is hereby further amended by inserting after the word “the”, in line 30, the following  
292 words:- minor or.

293           SECTION 39. Subsection (d) of said section 5-306A of said chapter 190B, as so  
294 appearing, is hereby amended by striking out, in lines 35 to 38, inclusive, the words “An  
295 incapacitated person is required to attend any hearing relative to authority to consent to treatment  
296 for which a substituted judgment determination is required, unless the court finds that there exist  
297 extraordinary circumstances requiring the absence of the” and inserting in place thereof the  
298 following words:- A minor 14 or more years of age or an incapacitated person shall be required  
299 to attend any hearing relative to authority to consent to treatment for which a substituted  
300 judgment determination is required, unless the court finds that there exist extraordinary  
301 circumstances requiring the absence of the minor or.

302           SECTION 40. Section 5-309 of said chapter 190B, as so appearing, is hereby amended  
303 by inserting after the word “guardianships”, in line 42, the following words:- of incapacitated  
304 persons.

305           SECTION 41. Said section 5-309 of said chapter 190B, as so appearing, is hereby further  
306 amended by striking out subsection (g) and inserting in place thereof the following subsection:-

307           (g) No guardian shall have the authority to admit an incapacitated person to a nursing  
308 facility, except upon a specific finding by the court that such admission is in the incapacitated



309 person's best interest, unless: (1) the admission shall not exceed 60 days; (2) any person  
310 authorized to sign a medical certificate recommends such admission; (3) neither any interested  
311 person nor the incapacitated person objects; (4) on or before such admission, a written notice of  
312 intent to admit the incapacitated person to a nursing facility for short term-services has been filed  
313 by the guardian in the appointing court and a copy thereof has been served in-hand on the  
314 incapacitated person and provided to the nursing facility; and (5) the incapacitated person is  
315 represented by counsel or counsel is appointed forthwith. The notice of intent to admit the  
316 incapacitated person to a nursing facility for short-term services shall be on a form prescribed by  
317 the chief justice of the probate and family court.

318         SECTION 42. Subsection (b) of section 5-404 of said chapter 190B, as so appearing, is  
319 hereby amended by striking out clause (11) and inserting in place thereof the following clause:-

320         (11) except for a conservatorship of a minor filed pursuant to section 5-401(b), a  
321 statement:

322         (A) that a medical certificate conforming to section 5-303(c), dated within 30 days of the  
323 filing of the petition; provided that such medical certificate is based upon an examination of such  
324 minor that was conducted within 30 days of the filing of the petition or, in the case of a person  
325 alleged to be developmentally disabled, a clinical team report dated within 180 days of the filing  
326 of the petition, is in the possession of the court or accompanies the petition; or

327         (B) of the nature of any circumstance which renders obtaining a medical certificate or  
328 clinical team report impossible, supported by affidavit or affidavits meeting the requirements set  
329 forth in Massachusetts Rule of Civil Procedure 4.1(h), in which case the court may waive or  
330 postpone the requirement of filing a medical certificate or clinical team report.

331           SECTION 43. Section 5-407 of said chapter 190B, as so appearing, is hereby amended  
332 by striking out clauses (5) to (7), inclusive, and inserting in place thereof the following 4  
333 clauses:-

334           (5) any required clinical team report is dated and the examinations have taken place  
335 within 180 days prior to the filing of the petition;

336           (6) the person for whom a conservator is sought is a disabled person;

337           (7) the appointment is necessary or desirable as a means of providing continuing care and  
338 supervision of the property and business affairs of the person to be protected; and

339           (8) the person's needs cannot be met by less restrictive means, including the use of  
340 appropriate technological assistance.

341           The court, on appropriate findings, may enter any appropriate order or dismiss the  
342 proceedings.

343           SECTION 44. Section 5-411 of said chapter 190B, as so appearing, is hereby amended  
344 by striking out, in line 3, the figure "5-410" and inserting in place thereof the following figure:-  
345 5-307.

346           SECTION 45. Section 5-413 of said chapter 190B, as so appearing, is hereby amended  
347 by striking out the last sentence and inserting in place thereof the following sentence:- The court  
348 may order that such compensation be paid by any party or parties as it shall determine.

349           SECTION 46. Subsection (e) of section 5-418 of said chapter 190B, as so appearing, is  
350 hereby amended by adding the following sentence:- Such discharge shall forever exonerate the

351 conservator and the conservator's sureties from all liability under such decree unless the  
352 conservator's account is impeached for fraud or manifest error.

353           SECTION 47. Section 5-423 of said chapter 190B, as so appearing, is hereby amended  
354 by striking out, in line 97, the letter "(c)" and inserting in place thereof the following letter:- (d).

355           SECTION 48. Section 5-429 of said chapter 190B, as so appearing, is hereby amended  
356 by striking out, in line 10, the word "incapacitated" and inserting in place thereof the following  
357 word:- disabled.

358           SECTION 49. Section 5-504 of said chapter 190B, as so appearing, is hereby amended  
359 by adding the following subsection:-

360           (c) No revocation by a principal under a written power of attorney, durable or otherwise,  
361 shall revoke or terminate the agency as to the attorney in fact or other person who, without actual  
362 knowledge of the revocation, acts in good faith under the power or relies in good faith on acts  
363 under the power. Any action so taken or relied upon, unless otherwise invalid or unenforceable,  
364 binds the principal and successors in interest of the principal. As to a person other than the  
365 attorney in fact, such person shall not be deemed to have actual knowledge unless the revocation  
366 is in a writing executed by the principal or a duly appointed personal representative of the  
367 principal and is actually received by such person or, in the case of transactions involving real  
368 estate or any interest therein, is recorded in due course as provided in section 25 of chapter 184.

369           SECTION 50. Said chapter 190B, is hereby amended by striking out sections 7-101 to 7-  
370 401, inclusive, as so appearing, and inserting in place thereof the following headings:-

371           PART 1. [RESERVED]

372           PART 2. [RESERVED]

373           PART 3. [RESERVED]

374           PART 4. [RESERVED]

375           SECTION 51. Section 7-502 of said chapter 190B, as so appearing, is hereby amended  
376 by striking out, in line 1, the words “section 7-401” and inserting in place thereof the following  
377 words:- section 816 of chapter 203E.

378           SECTION 52. Sections 1 to 8, inclusive, of chapter 196 of the General Laws are hereby  
379 repealed.

380           SECTION 53. Section 3C of chapter 203 of the General Laws is hereby repealed.

381           SECTION 54. The General Laws are hereby amended by inserting after chapter 203D  
382 the following chapter—

383                               CHAPTER 203E

384                               MASSACHUSETTS UNIFORM TRUST CODE

385                               ARTICLE 1

386                               GENERAL PROVISIONS AND DEFINITIONS

387           Section 101. Short title

388           This chapter shall be known and may be cited as the Massachusetts Uniform Trust Code.

389           Section 102. Scope

390 This chapter applies to express trusts, charitable or non-charitable, of a donative nature  
391 and trusts created pursuant to a judgment or decree that requires the trust to be administered in  
392 the manner of an express trust.

### 393 Section 103. Definitions

394 In this chapter the following words shall, unless the context clearly requires otherwise,  
395 have the following meanings:-

396 “Action”, with respect to an act of a trustee, includes a failure to act.

397 “Ascertainable standard”, a standard relating to an individual’s health, education, support  
398 or maintenance.

399 “Beneficiary”, a person who has a present or future beneficial interest in a trust, vested or  
400 contingent.

401 “Charitable trust”, a trust, or portion of a trust, created for a charitable purpose described  
402 in subsection (a) of section 405.

403 “Environmental law”, a federal, state or local law, rule, regulation or ordinance relating  
404 to protection of the environment.

405 “Interests of the beneficiaries”, the beneficial interests provided in the terms of the trust.

406 “Jurisdiction”, a geographic area, including a state or country.

407 “Person”, an individual, corporation, business trust, estate, trust, partnership, limited  
408 liability company, association, joint venture, government, governmental subdivision, agency or  
409 instrumentality, public corporation or any other legal or commercial entity.

410 “Property”, anything that may be the subject of ownership, whether real, personal, legal,  
411 equitable or any interest therein.

412 “Qualified beneficiary”, a beneficiary who, on the date the beneficiary’s qualification is  
413 determined:

414 (i) is a distributee or permissible distributee of trust income or principal; or

415 (ii) would be a distributee or permissible distributee of trust income or principal if the  
416 trust terminated on that date.

417 “Revocable”, a trust that is revocable by the settlor without the consent of the trustee or a  
418 person holding an adverse interest.

419 “Settlor”, a person, including a testator, who creates or contributes property to a trust. If  
420 more than one person creates or contributes property to a trust, each person is a settlor of the  
421 portion of the trust property attributable to that person’s contribution except to the extent another  
422 person has the power to revoke or withdraw that portion.

423 “Spendthrift provision”, a term of a trust which restrains transfer of a beneficiary’s  
424 interest.

425 “State”, a state of the United States, the District of Columbia, Puerto Rico, the United  
426 States Virgin Islands or any territory or insular possession subject to the jurisdiction of the  
427 United States, including an Indian tribe or band recognized by federal law or formally  
428 acknowledged by a state.

429 “Terms of a trust”, the manifestation of the settlor’s intent regarding a trust’s provisions  
430 as expressed in the trust instrument or as may be established by other evidence that would be  
431 admissible in a judicial proceeding.

432 “Trust instrument”, an instrument that contains terms of the trust, including any  
433 amendments thereto.

434 “Trustee”, an original, additional or successor trustee or a co-trustee.

#### 435 Section 104. Knowledge

436 (a) Subject to subsection (b), a person shall have knowledge of a fact if the person:

437 (1) has actual knowledge of it;

438 (2) has received a notice or notification of it; or

439 (3) from all the facts and circumstances known to the person at the time in  
440 question, has reason to know it.

441 (b) An organization that conducts activities through employees has notice or knowledge  
442 of a fact involving a trust only from the time the information was received by an employee  
443 having responsibility to act for the trust, or would have been brought to the employee’s attention  
444 if the organization had exercised reasonable diligence. An organization exercises reasonable  
445 diligence if it maintains reasonable routines for communicating significant information to the  
446 employee having responsibility to act for the trust and there is reasonable compliance with the  
447 routines. Reasonable diligence does not require an employee of the organization to communicate  
448 information unless the communication is part of the individual’s regular duties or the individual  
449 knows a matter involving the trust would be materially affected by the information.

Section 105. Default and mandatory rules

(a) Except as otherwise provided in the terms of the trust, this chapter shall govern the duties and powers of a trustee, relations among trustees and the rights and interests of a beneficiary.

(b) The terms of a trust shall prevail over any provision of this chapter except:

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust have a purpose that is lawful and not contrary to public policy;

(4) the power of the court to modify or terminate a trust under sections 410 to 416, inclusive;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust, as provided in article 5;

(6) the power of the court under section 702 to require, dispense with or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 708 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the effect of an exculpatory term under section 1008;



469                   (9) the rights under sections 1010 to 1013, inclusive, of a person other than a  
470 trustee or beneficiary; and

471                   (10) the power of the court to take such action and exercise such jurisdiction as  
472 may be necessary in the interests of justice.

473           Section 106. Common law of trusts; principles of equity

474           The common law of trusts and principles of equity shall supplement this chapter, except  
475 to the extent modified by this chapter or any other general or special law.

476           Section 107. [Reserved]

477           Section 108. Principal place of administration

478           (a) Without precluding other means for establishing a sufficient connection with the  
479 designated jurisdiction, terms of a trust designating the principal place of administration shall be  
480 valid and controlling if:

481                   (1) a trustee's principal place of business is located in, or a trustee is a resident  
482 of, the designated jurisdiction; or

483                   (2) all or part of the administration occurs in the designated jurisdiction.

484           (b) Without precluding the right of a court to order, approve or disapprove a transfer, the  
485 trustee may, but has no affirmative duty to, transfer the trust's principal place of administration  
486 to another state or to a jurisdiction outside of the United States.

487 (c) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's  
488 principal place of administration not less than 60 days before initiating the transfer. The notice  
489 of proposed transfer shall include:

490 (1) the name of the jurisdiction to which the principal place of administration is  
491 to be transferred;

492 (2) the address and telephone number at the new location at which the trustee can  
493 be contacted;

494 (3) an explanation of the reasons for the proposed transfer;

495 (4) the date on which the proposed transfer is anticipated to occur; and

496 (5) the date, not less than 60 days after the giving of the notice, by which the  
497 qualified beneficiary must notify the trustee of an objection to the proposed transfer.

498 (d) The authority of a trustee under this section to transfer a trust's principal place of  
499 administration shall terminate if a qualified beneficiary notifies the trustee of an objection to the  
500 proposed transfer on or before the date specified in the notice.

501 Section 109. Methods and waiver of notice

502 (a) Notice to a person under this chapter, or the sending of a document to a person under  
503 this chapter, shall be accomplished in a manner reasonably suitable under the circumstances and  
504 likely to result in receipt of the notice or document. Permissible methods of notice or for sending  
505 a document shall include first-class mail, personal delivery or delivery to the person's last known  
506 place of residence or place of business.

(b) Notice required under this chapter, or a document required to be sent under this chapter, need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter, or the sending of a document under this chapter, may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding, authorized by this chapter to be brought by petition in the probate and family court department of the trial court, shall be given as provided in section 1-401 of chapter 190B. Notice of any other judicial proceeding shall be given as provided in the applicable procedural rules.

#### Section 110. Others treated as qualified beneficiaries

(a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust shall have the rights of a qualified beneficiary under this chapter if, on the date the charitable organization's qualification is being determined, the charitable organization:

(1) is a distributee or permissible distributee of trust income or principal; or

(2) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(c) A person appointed to enforce a trust created for the care of an animal or another non-charitable purpose, as provided in sections 408 and 409, shall have the rights of a qualified beneficiary under this chapter.

#### Section 111. Non-judicial settlement agreements

(a) For purposes of this section, “interested persons” shall mean persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c), interested persons may enter into a binding non-judicial settlement agreement with respect to any matter involving a trust.

(c) A non-judicial settlement agreement shall be valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Matters that may be resolved by a non-judicial settlement agreement shall include:

(1) the interpretation or construction of the terms of a trust;

(2) the approval of a trustee’s report or accounting;

(3) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) the resignation or appointment of a trustee and the determination of a trustee’s compensation;

(5) transfer of a trust’s principal place of administration; and

(6) liability of a trustee for an action relating to the trust.

(e) Any interested person may request that the court approve a non-judicial settlement agreement to determine whether the representation, as provided in article 3, was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.

#### Section 112. Rules of construction

The rules of construction that apply in the commonwealth to the interpretation of and disposition of property shall also apply, as appropriate, to the interpretation of the terms of a revocable trust and the disposition of the trust property. For the purposes of this section, a “revocable trust” shall mean a trust that is: (1) revocable by the settlor until the time of the settlor’s death; (2) created or amended by the settlor after the effective date of this chapter; and (3) was intended to dispose of the settlor’s property at death, whether under will or otherwise and whether the trust was funded at the time of the settlor’s death.

#### Section 113. Qualification of foreign trustee

A foreign corporate trustee shall qualify as a foreign corporation doing business in the commonwealth if it maintains the principal place of administration of any trust within the commonwealth. A foreign co-trustee shall not be required to qualify in the commonwealth solely because its co-trustee maintains the principal place of administration in the commonwealth. Unless otherwise doing business in the commonwealth, local qualification by a foreign trustee, corporate or individual, shall not be required for the trustee to receive distribution from a local estate, to hold, invest in, manage or acquire property located in the commonwealth

568 or to maintain litigation. Nothing in this section shall affect a determination of what other acts  
569 require qualification as doing business in the commonwealth.

## 570 ARTICLE 2

### 571 JUDICIAL PROCEEDINGS

#### 572 Section 201. Role of court in administration of trust

573 (a) The court may intervene in the administration of a trust to the extent its jurisdiction is  
574 invoked by an interested person or as provided by law.

575 (b) A trust shall not be subject to continuing judicial supervision unless ordered by the  
576 court.

577 (c) A judicial proceeding involving a trust may relate to any matter involving the trust's  
578 administration, including a request for instructions and an action to declare rights.

579 (d) A proceeding brought under this chapter in the probate and family court department  
580 of the trial court to appoint or remove a trustee, to approve the resignation of a trustee, to review  
581 and settle accounts of a trustee or concerning any other matter relating to the administration of a  
582 trust may be initiated by filing a petition and giving notice to interested parties, as provided in  
583 section 109. A decree or judgment shall be valid only to those who are given notice of the  
584 proceeding.

#### 585 Section 202. Jurisdiction over trustee and beneficiary

586 (a) By accepting the trusteeship of a trust having its principal place of administration in  
587 the commonwealth or by moving the principal place of administration to the commonwealth, the

588 trustee submits personally to the jurisdiction of the courts of the commonwealth regarding any  
589 matter involving the trust.

590 (b) With respect to their interests in the trust, the beneficiaries of a trust with its principal  
591 place of administration in the commonwealth shall be subject to the jurisdiction of the courts of  
592 the commonwealth regarding any matter involving the trust. By accepting a distribution from  
593 such a trust, the recipient submits personally to the jurisdiction of the courts of the  
594 commonwealth regarding any matter involving the trust.

595 (c) This section shall not preclude other methods of obtaining jurisdiction over a trustee,  
596 beneficiary or other person receiving property from the trust.

597 Section 203. Trust proceedings; dismissal of matters relating to foreign trusts

598 The court shall not over the objection of a party, entertain proceedings under section 201  
599 involving a trust registered or having its principal place of administration in another state, unless:  
600 (1) all appropriate parties could not be bound by litigation in the courts of the state where the  
601 trust is registered or has its principal place of administration; or (2) the interests of justice  
602 otherwise would seriously be impaired. The court may condition a stay or dismissal of a  
603 proceeding under this section on the consent of a party to submit to the jurisdiction of the state in  
604 which the trust is registered or has its principal place of administration or the court may grant a  
605 continuance or enter any other appropriate order.

606 Section 204. Venue

607 A trust shall be subject to the jurisdiction of the probate and family court department of  
608 the trial court of the commonwealth in the county where its principal place of administration is

609 located. The principal place of administration of a testamentary trust shall be deemed to be the  
610 location of the court of the commonwealth in which the will creating the trust was granted  
611 informal or formal probate. Unless otherwise designated in the trust instrument, the principal  
612 place of administration of an inter vivos trust shall be the trustee's usual place of business where  
613 the records pertaining to the trust are kept or at the trustee's residence if the trustee has no such  
614 place of business. In the case of co-trustees, the principal place of administration, if not  
615 otherwise designated in the trust instrument, shall be: (1) the usual place of business of the  
616 corporate trustee if there is but 1 corporate co-trustee; (2) the usual place of business or residence  
617 of the individual trustee who is a professional fiduciary if there is but 1 such person and no  
618 corporate co-trustee; or (3) the usual place of business or residence of any of the co-trustees as  
619 agreed upon by them.

620       Section 205. Petition for transfers of trust property the disposition of which depends  
621 upon the death of an absentee

622       (a) If a trustee holds trust property the disposition of which depends upon the death of an  
623 absentee whose death has not been determined, the trustee, or any person who would be  
624 interested in the trust property if the absentee were dead may on or after the day 5 years after the  
625 date of the absentee's disappearance petition the court having jurisdiction of the trust for an order  
626 that the trust property be disposed of to the persons it would have been distributed to under the  
627 trust if the absentee had died on that day.

628       (b) The court may direct the petitioner to report the results of a reasonably diligent  
629 search for the absentee in any manner that may seem advisable, including any or all of the  
630 following methods:



631 (1) by inserting in a periodical of general circulation a notice requesting  
632 information from any person having knowledge of the whereabouts of the absentee;

633 (2) by notifying law enforcement officials, public welfare agencies and registers  
634 of deaths in appropriate locations of the disappearance of the absentee; or

635 (3) by engaging the services of an investigator.

636 The costs of any search so directed shall be paid from the trust property.

637 (c) After a search described in subsection (b) has been completed to the satisfaction of  
638 the court, notice of the hearing on the petition shall be given as provided in section 1-401 of  
639 chapter 190B.

640 (d) If after the hearing the court finds that the facts warrant a presumption of death, the  
641 court shall enter an appropriate order of disposition of the trust property and any undistributed  
642 net income.

### 643 ARTICLE 3

### 644 REPRESENTATION

#### 645 Section 301. Representation: basic effect

646 (a) Notice to a person who may represent and bind another person under this article shall  
647 have the same effect as if notice were given directly to the other person.

648 (b) The consent of a person who may represent and bind another person under this article  
649 shall be binding on the person represented unless the person represented objects to the  
650 representation before the consent becomes effective.

(c) Except as otherwise provided in section 602, a person who, under this article, may represent a settlor who lacks capacity may receive notice and give binding consent on the settlor's behalf.

(d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection (a) of section 411.

#### Section 302. Representation by holder of general testamentary power of appointment

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default or otherwise, are subject to the power.

#### Section 303. Representation by fiduciaries and parents

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) a conservator may represent and bind the estate that the conservator controls;

(2) a guardian may represent and bind the ward or protected person if a conservator has not been appointed;

(3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) a trustee may represent and bind the beneficiaries of the trust;

(5) a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

#### Section 304. Representation by person having substantially identical interest

Unless otherwise represented, a minor, incapacitated or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

#### Section 305. Appointment of guardian ad litem

(a) If the court determines that an interest is not represented under this article or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, incapacitated or unborn individual or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.

(b) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a guardian ad litem may consider general benefit accruing to the living members of the individual's family.

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## ARTICLE 4

692

### CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

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#### Section 401. Methods of creating trust

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A trust may be created by:

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(1) transfer of property to another person as trustee during the settlor's lifetime or by will

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or other disposition taking effect upon the settlor's death;

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(2) declaration by the owner of property that the owner holds identifiable property as

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trustee; or

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(3) exercise of a power of appointment in favor of a trustee.

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#### Section 402. Requirements for creation

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(a) A trust shall be created only if:

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(1) the settlor has capacity to create a trust;

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(2) the settlor indicates an intention to create the trust;

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(3) the trust has a definite beneficiary or is:

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(A) a charitable trust;

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(B) a trust for the care of an animal, as provided in section 408; or

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(C) a trust for a non-charitable purpose, as provided in section 409;

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(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary shall be definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class shall be valid. If the power is not exercised within a reasonable time, the power shall fail and the property subject to the power shall pass to the persons who would have taken the property had the power not been conferred.

#### Section 403. Trusts created in other jurisdictions

A trust not created by will shall be validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

(1) the settlor was domiciled, had a place of abode or was a national;

(2) a trustee was domiciled or had a place of business; or

(3) any trust property was located.

#### Section 404. Trust purposes

A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

#### Section 405. Charitable purposes; enforcement

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes or other purposes which are beneficial to the community.

(b) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary and do not provide a method to select such a purpose or beneficiary, the court may select 1 or more charitable purposes or beneficiaries. The selection shall be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust may maintain a proceeding to enforce the trust.

#### Section 406. Creation of trust induced by fraud, duress or undue influence

A trust shall be void to the extent its creation was induced by fraud, duress or undue influence.

#### Section 407. Evidence of oral trust

Except as required by statute, a trust need not be evidenced by a trust instrument. The creation of an oral trust and its terms shall be established by clear and convincing evidence.

#### Section 408. Trust for care of an animal

(a) A trust for the care of animals alive during the settlor's lifetime shall be valid. Unless the trust instrument provides for an earlier termination, the trust shall terminate upon the death of the animal or, if the trust was created to provide for the care of more than 1 animal alive during the settlor's lifetime, upon the death of last surviving animal.

(b) Except as otherwise expressly provided in the trust instrument, no portion of the principal or income shall be converted to the use of the trustee, other than reasonable trustee fees and expenses of administration, or to any use other than for the benefit of covered animals.

(c) A court may reduce the amount of property held by the trust if it determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health or appearance of the covered animal. The amount of the reduction shall pass as unexpended trust property in accordance with subsection (d).

(d) Upon reduction or termination, the trustee shall transfer the unexpended trust property in the following order:

(1) as directed in the trust instrument;

(2) to the settlor, if living;

(3) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will or codicil; or

(4) to the settlor's heirs in accordance with chapter 190B.

(e) If a trustee is not designated by the trust instrument or no designated trustee is willing or able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out. The court may also make other orders and determinations as the court deems advisable to carry out the intent of the settlor and the intended use of the trust.

(f) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument, by the person having custody of an animal for which care is provided by the trust instrument, by a remainder beneficiary or by an individual appointed by the court upon application of an individual or charitable organization.

(g) The settlor or other custodian of an animal for whose benefit a trust was created may transfer custody of the animal to the trustee at or subsequent to the creation of the trust.

(h) Any trust created under this section shall be subject to sections 2-901 to 2-906, inclusive, of chapter 190B, and the common law rule against perpetuities; provided, however, that the life or lives in being shall be measured based on the animal or animals alive at the time of the settlor's death or when the trust becomes irrevocable. The measuring lives shall be those of the beneficiary animals, not human lives.

#### Section 409. Non-charitable trust without ascertainable beneficiary.

Except as otherwise provided in section 408, or by another general or special law, the following rules shall apply:

(1) A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the trustee.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount



787 required for the intended use. Property not required for the intended use shall be distributed to  
788 the settlor, if then living, otherwise to the settlor's successors in interest, unless the terms of the  
789 trust provide otherwise.

790       Section 410. Modification or termination of trust; proceedings for approval or  
791 disapproval

792       (a) In addition to the methods of termination prescribed by sections 411 to 414,  
793 inclusive, a trust shall terminate if it is revoked or expires under its terms, no purpose of the trust  
794 remains to be achieved or the purposes of the trust have become unlawful, contrary to public  
795 policy or impossible to achieve.

796       (b) A proceeding to approve or disapprove a proposed modification or termination under  
797 sections 411 to 416, inclusive, or a trust combination or division under section 417, may be  
798 commenced by a trustee or beneficiary and a proceeding to approve or disapprove a proposed  
799 modification or termination under section 411 may be commenced by the settlor.

800       Section 411. Modification or termination of non-charitable irrevocable trust by consent

801       (a) If, upon petition, the court finds that the settlor and all beneficiaries consent to the  
802 modification or termination of a non-charitable irrevocable trust, the court may approve the  
803 modification or termination even if the modification or termination is inconsistent with a  
804 material purpose of the trust.

805       (b) A non-charitable irrevocable trust may be terminated upon consent of all of the  
806 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any  
807 material purpose of the trust. A non-charitable irrevocable trust may be modified upon consent of

808 all of the beneficiaries if the court concludes that modification is not inconsistent with a material  
809 purpose of the trust.

810 (c) If not all of the beneficiaries consent to a proposed modification or termination of the  
811 trust under subsection (a) or (b), the modification or termination may be approved by the court if  
812 the court is satisfied that:

813 (1) if all of the beneficiaries had consented, the trust could have been modified or  
814 terminated under this section; and

815 (2) the interests of a beneficiary who does not consent will be adequately  
816 protected.

817 Section 412. Modification or termination because of unanticipated circumstances or  
818 inability to administer trust effectively

819 (a) The court may modify the administrative or dispositive terms of a trust or terminate  
820 the trust if, because of circumstances not anticipated by the settlor, modification or termination  
821 will further the purposes of the trust. To the extent practicable, the modification shall be made in  
822 accordance with the settlor's probable intent.

823 (b) The court may modify the administrative terms of a trust if continuation of the trust  
824 on its existing terms would be impracticable or wasteful or impair the trust's administration.

825 Section 413. [Reserved]

826 Section 414. Modification or termination of uneconomic trust

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value of less than \$200,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section shall not apply to an easement for conservation or preservation.

(e) Action may be taken under this section regardless of any spendthrift or similar protective provision.

#### Section 415. Reformation to correct mistakes

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that the settlor's intent or the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

#### Section 416. [Reserved]

#### Section 417. Combination and division of trusts

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

## ARTICLE 5

### CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

#### Section 501. Rights of beneficiary's creditor or assignee

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

#### Section 502. Spendthrift provision

(a) A spendthrift provision shall be valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, shall be sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

865           Section 503. [Reserved]

866           Section 504. [Reserved]

867           Section 505. Creditor's claim against settlor

868           (a) Whether or not a trust contains a spendthrift provision, the following rules shall  
869 apply:

870                   (1) During the lifetime of the settlor, the property of a revocable trust shall be  
871 subject to claims of the settlor's creditors.

872                   (2) With respect to an irrevocable trust, a creditor or assignee of the settlor may  
873 reach the maximum amount that can be distributed to or for the settlor's benefit and, if a trust has  
874 more than 1 settlor, the amount the creditor or assignee of a particular settlor may reach may not  
875 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.  
876 Trust property shall not be considered distributable to or for the settlor's benefit solely because  
877 the trustee has the discretion under the terms of the trust to reimburse the settlor for any tax on  
878 trust income or capital gain that is payable by the settlor under the law imposing such tax; no  
879 creditor or assignee of the settlor of an irrevocable trust shall be entitled to reach any trust  
880 property based on the discretionary authority described in this sentence.

881                   (3) After the death of a settlor, and subject to the settlor's right to direct the  
882 source from which liabilities will be paid, the property of a trust that was revocable at the  
883 settlor's death shall be subject to claims of the settlor's creditors, the expenses of the settlor's  
884 funeral and disposal of remains and statutory allowances to a surviving spouse and children to

885 the extent the settlor's probate estate is inadequate to satisfy those claims, expenses and  
886 allowances.

887           Section 506. Overdue distribution

888           (a) In this section, "mandatory distribution" shall mean a distribution of income or  
889 principal which the trustee is required to make to a beneficiary under the terms of the trust,  
890 including a distribution upon termination of the trust. "Mandatory distribution" shall not include  
891 a distribution subject to the exercise of the trustee's discretion even if: (1) the discretion is  
892 expressed in the form of a standard of distribution; or (2) the terms of the trust authorizing a  
893 distribution couple language of discretion with language of direction.

894           (b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
895 beneficiary may reach a mandatory distribution of income or principal, including a distribution  
896 upon termination of the trust, if the trustee has not made the distribution to the beneficiary within  
897 a reasonable time after the designated distribution date.

898           Section 507. Personal obligations of trustee

899           Trust property shall not be subject to personal obligations of the trustee, even if the  
900 trustee becomes insolvent or bankrupt.

901                               ARTICLE 6

902                               REVOCABLE TRUSTS

903           Section 601. [Reserved]

904           Section 602. Revocation or amendment of revocable trust

905           (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor  
906 may revoke or amend the trust.

907           (b) If a revocable trust is created or funded by more than 1 settlor:

908                   (1) to the extent the trust consists of community property, the trust may be  
909 revoked by either spouse acting alone but may be amended only by joint action of both spouses;

910                   (2) to the extent the trust consists of property other than community property,  
911 each settlor may revoke or amend the trust with regard to the portion of the trust property  
912 attributable to that settlor's contribution; and

913                   (3) upon the revocation or amendment of the trust by fewer than all of the  
914 settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

915           (c) The settlor may revoke or amend a revocable trust:

916                   (1) by complying with a method provided in the terms of the trust; or

917                   (2) if the terms of the trust do not provide a method, by any method manifesting  
918 clear and convincing evidence of the settlor's intent.

919           (d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the  
920 settlor directs.

921           (e) A settlor's powers with respect to revocation, amendment or distribution of trust  
922 property may be exercised by an agent under a power of attorney only to the extent expressly  
923 authorized by the terms of the trust and the power.

(f) A trustee who does not know that a trust has been revoked or amended shall not be liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

Section 603. Settlor's powers; powers of withdrawal

(a) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries shall be subject to the control of the settlor and the duties of the trustee shall be owed exclusively to the settlor.

(b) During the period the power may be exercised, the holder of a non-lapsing power of withdrawal shall be treated, for purposes of this section, as if the holder of the non-lapsing power of withdrawal were the settlor of a revocable trust to the extent of the property subject to the power.

Section 604. Limitation on action contesting validity of revocable trust; distribution of trust property

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) 1 year after the settlor's death; or

(2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, the trustee's name and address and the time allowed for commencing a proceeding.



943           (b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the  
944 trustee may proceed to distribute the trust property in accordance with the terms of the trust. The  
945 trustee shall not be subject to liability for doing so unless:

946           (1) the trustee knows of a pending judicial proceeding contesting the validity of  
947 the trust; or

948           (2) a potential contestant has notified the trustee of a possible judicial proceeding  
949 to contest the trust and a judicial proceeding is commenced within 60 days after the contestant  
950 sent the notification.

951           (c) A beneficiary of a trust that is determined to have been invalid shall be liable to  
952 return any distribution received.

## 953                                   ARTICLE 7

### 954                                   OFFICE OF TRUSTEE

#### 955           Section 701. Accepting or declining trusteeship

956           (a) Except as otherwise provided in subsection (c), a person designated as trustee shall  
957 accept the trusteeship:

958           (1) by substantially complying with a method of acceptance provided in the terms  
959 of the trust; or

960           (2) if the terms of the trust do not provide a method or the method provided in the  
961 terms is not expressly made exclusive, by accepting delivery of the trust property, exercising  
962 powers or performing duties as trustee or otherwise indicating acceptance of the trusteeship.

963 (b) A person designated as trustee who has not yet accepted the trusteeship may reject  
964 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable  
965 time after knowing of the designation shall be deemed to have rejected the trusteeship.

966 (c) A person designated as trustee without accepting the trusteeship may:

967 (1) act to preserve the trust property if, within a reasonable time after acting, the  
968 person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity,  
969 to a qualified beneficiary; and

970 (2) inspect or investigate trust property to determine potential liability under  
971 environmental or other law or for any other purpose.

972 Section 702. Duty to provide bond

973 In the case of a testamentary trust, a trustee shall furnish a bond for the performance of  
974 the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the  
975 trust or found by the probate and family court department of the trial court to be not necessary to  
976 protect the interests of the beneficiaries. On petition of the trustee or other interested person the  
977 probate court may excuse a requirement of bond, reduce the amount of the bond, release the  
978 surety or permit the substitution of another bond with the same or different sureties. If the  
979 instrument creating the trust exempts the trustee from furnishing a bond or limits the amount  
980 thereof, or the probate court determines that the bond is insufficient, the probate court may, if it  
981 concludes that a bond is necessary or that a bond of a larger amount is necessary, require the  
982 furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-  
983 606 of chapter 190B.

Section 703. Co-trustees

(a) Co-trustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust.

(c) A co-trustee shall participate in the performance of a trustee's function unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other laws or other temporary incapacity or the co-trustee has properly delegated the performance of the function to another trustee.

(d) If a co-trustee is unavailable to perform duties because of absence, illness, disqualification under other laws or other temporary incapacity and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining co-trustee or a majority of the remaining co-trustees may act for the trust.

(e) Except as otherwise provided in subsection (f), a trustee who does not join in an action of another trustee shall not be liable for the action.

(f) Each trustee shall exercise reasonable care to:

(1) prevent a co-trustee from committing a breach of trust; and

(2) compel a co-trustee to redress a breach of trust.

Section 704. Vacancy in trusteeship; appointment of successor

(a) A vacancy in a trusteeship shall occur if:

- 1004 (1) a person designated as trustee rejects the trusteeship;
- 1005 (2) a person designated as trustee cannot be identified or does not exist;
- 1006 (3) a trustee resigns;
- 1007 (4) a trustee is disqualified or removed;
- 1008 (5) a trustee dies; or
- 1009 (6) a guardian or conservator is appointed for an individual serving as trustee.
- 1010 (b) If 1 or more co-trustees remain in office, a vacancy in a trusteeship need not be filled.
- 1011 A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.
- 1012 (c) A vacancy in a trusteeship that is required to be filled shall be filled in the following
- 1013 order of priority:
- 1014 (1) by a person designated by the terms of the trust to act as successor trustee;
- 1015 (2) by a person appointed by unanimous agreement of the qualified beneficiaries;
- 1016 or
- 1017 (3) by a person appointed by the court.
- 1018 (d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
- 1019 may appoint an additional trustee or special fiduciary whenever the court considers the
- 1020 appointment necessary for the administration of the trust.

1021 Section 705. Resignation of trustee

- 1022 (a) A trustee may resign:

1023                   (1) upon at least 30 days' notice to: (i) the settlor and all co-trustees of the trust,  
1024 in the case of a revocable trust, and (ii) the qualified beneficiaries and all co-trustees of the trust,  
1025 in the case of any other trust; or

1026                   (2) with the approval of the court.

1027           (b) In approving a resignation, the court may issue orders and impose conditions  
1028 reasonably necessary for the protection of the trust property.

1029           (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or  
1030 omissions of the trustee shall not be discharged or affected by the trustee's resignation.

1031           Section 706. Removal of trustee

1032           (a) The settlor, a co-trustee or a beneficiary may request the court to remove a trustee or  
1033 a trustee may be removed by the court on its own initiative.

1034           (b) The court may remove a trustee if:

1035                   (1) the trustee has committed a serious breach of trust;

1036                   (2) there is a lack of cooperation among co-trustees that substantially impairs the  
1037 administration of the trust;

1038                   (3) because of unfitness, unwillingness or persistent failure of the trustee to  
1039 administer the trust effectively, the court determines that removal of the trustee best serves the  
1040 interests of the beneficiaries; or

1041                   (4) there has been a substantial change of circumstances or removal is requested  
1042 by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the

1043 interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust and  
1044 a suitable co-trustee or successor trustee is available.

1045 (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition  
1046 to removing a trustee, the court may order such appropriate relief under subsection (b) of section  
1047 1001 as may be necessary to protect the trust property or the interests of the beneficiaries.

1048 Section 707. Delivery of property by former trustee

1049 A trustee who has resigned or been removed shall proceed expeditiously to deliver the  
1050 trust property within the trustee's possession to the co-trustee, successor trustee or other person  
1051 entitled to it.

1052 Section 708. Compensation of trustee

1053 (a) If the terms of a trust do not specify the trustee's compensation, a trustee shall be  
1054 entitled to compensation that is reasonable under the circumstances.

1055 (b) If the terms of a trust specify the trustee's compensation, the trustee shall be entitled  
1056 to be compensated as specified, but the court may allow more or less compensation if:

1057 (1) the duties of the trustee are substantially different from those contemplated  
1058 when the trust was created; or

1059 (2) the compensation specified by the terms of the trust would be unreasonably  
1060 low or high.

1061 Section 709. Reimbursement of expenses

1062 (a) A trustee shall be entitled to be reimbursed out of the trust property, with interest as  
1063 appropriate, for:

1064 (1) expenses that were properly incurred in the administration of the trust; and

1065 (2) expenses that were not properly incurred in the administration of the trust, to  
1066 the extent necessary to prevent unjust enrichment of the trust.

1067 (b) An advance by the trustee of money for the protection of the trust shall give rise to a  
1068 lien against trust property to secure reimbursement with reasonable interest.

## 1069 ARTICLE 8

### 1070 DUTIES AND POWERS OF TRUSTEE

#### 1071 Section 801. Duty to administer trust

1072 Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in  
1073 accordance with its terms and purposes and the interests of the beneficiaries and in accordance  
1074 with this chapter.

#### 1075 Section 802. Duty of loyalty

1076 (a) A trustee shall administer the trust solely in the interests of the beneficiaries.

1077 (b) Subject to the rights of persons dealing with or assisting the trustee, as provided in  
1078 section 1012, a sale, encumbrance or other transaction involving the investment or management  
1079 of trust property entered into by the trustee for the trustee's own personal account or which is  
1080 otherwise affected by a conflict between the trustee's fiduciary and personal interests shall be  
1081 voidable by a beneficiary affected by the transaction unless:

1082 (1) the transaction was authorized by the terms of the trust;

1083 (2) the transaction was approved by the court;

1084 (3) the beneficiary did not commence a judicial proceeding within the time  
1085 allowed by section 1005;

1086 (4) the beneficiary consented to the trustee's conduct, ratified the transaction or  
1087 released the trustee in compliance with section 1009; or

1088 (5) the transaction involves a contract entered into or claim acquired by the  
1089 trustee before the person became a trustee.

1090 (c) A sale, encumbrance or other transaction involving the investment or management of  
1091 trust property shall be presumed to be affected by a conflict between personal and fiduciary  
1092 interests if it is entered into by the trustee with:

1093 (1) the trustee's spouse;

1094 (2) the trustee's descendants, siblings, parents or their spouses;

1095 (3) an agent or attorney of the trustee; or

1096 (4) a corporation or other person or enterprise in which the trustee, or a person  
1097 that owns a significant interest in the trustee, has an interest that might affect the trustee's best  
1098 judgment.

1099 (d) A transaction not concerning trust property, in which the trustee engages in the  
1100 trustee's individual capacity, shall be a conflict between personal and fiduciary interests if the  
1101 transaction concerns an opportunity properly belonging to the trust.



1102           (e) An investment by a trustee in securities of an investment company or investment trust  
1103 to which the trustee, or its affiliate, provides services in a capacity other than as trustee shall not  
1104 be presumed to be affected by a conflict between personal and fiduciary interests if the  
1105 investment otherwise complies with the prudent investor rule of chapter 203C. In addition to  
1106 compensation for acting as trustee, the trustee may be compensated by the investment company  
1107 or investment trust for providing those services out of fees charged to the trust. If the trustee  
1108 receives compensation from the investment company or investment trust for providing  
1109 investment advisory or investment management services, the trustee shall at least annually notify  
1110 the persons entitled under section 813 to receive a copy of the trustee's annual report of the rate  
1111 and method by which that compensation was determined.

1112           (f) In voting shares of stock or in exercising powers of control over similar interests in  
1113 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries.

1114           (g) This section shall not preclude the following transactions, if fair to the beneficiaries:

1115                   (1) an agreement between a trustee and a beneficiary relating to the appointment  
1116 or compensation of the trustee;

1117                   (2) payment of reasonable compensation to the trustee;

1118                   (3) a transaction between a trust and another trust, decedent's estate or  
1119 conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1120                   (4) a deposit of trust money in a regulated financial service institution operated  
1121 by the trustee; or

1122 (5) an advance or loan by the trustee of money to the trust for a proper trust  
1123 purpose.

1124 Section 803. Impartiality

1125 If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing,  
1126 managing and distributing the trust property, giving due regard to the beneficiaries' respective  
1127 interests.

1128 Section 804. Prudent administration

1129 A trustee shall administer the trust as a prudent person would, considering the purposes,  
1130 terms and other circumstances of the trust. In satisfying this standard, the trustee shall exercise  
1131 reasonable care, skill and caution.

1132 Section 805. Costs of administration

1133 In administering a trust, the trustee may incur only costs that are appropriate and  
1134 reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

1135 Section 806. Trustee's skills

1136 A trustee who has special skills or expertise, or is named trustee in reliance upon the  
1137 trustee's representation that the trustee has such special skills or expertise, shall have a duty to  
1138 use such special skills or expertise.

1139 Section 807. Delegation by trustee

1140 (a) A trustee may delegate duties and powers if it is prudent to do so. The trustee shall  
1141 exercise reasonable care, skill and caution in:

1142 (1) selecting an agent;  
1143 (2) establishing the scope and terms of the delegation, consistent with the  
1144 purposes and terms of the trust; and  
1145 (3) periodically reviewing the agent's actions in order to monitor the agent's  
1146 performance and compliance with the terms of the delegation.

1147 (b) In performing a delegated function, an agent shall owe a duty to the trust to exercise  
1148 reasonable care to comply with the terms of the delegation.

1149 (c) A trustee who complies with subsection (a) shall not be liable to the beneficiaries or  
1150 to the trust for an action of the agent to whom the function was delegated.

1151 (d) By accepting a delegation of powers or duties from the trustee of a trust that is  
1152 subject to the laws of the commonwealth, an agent shall submit to the jurisdiction of the courts of  
1153 the commonwealth.

1154 Section 808. Powers to direct

1155 (a) While a trust is revocable, the trustee may follow a direction of the settlor that is  
1156 contrary to the terms of the trust.

1157 (b) If the terms of a trust confer upon a person, other than the settlor of a revocable trust,  
1158 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise  
1159 of the power, unless the attempted exercise is manifestly contrary to the terms of the trust or the  
1160 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that  
1161 the person holding the power owes to the beneficiaries of the trust.

1162 (c) A person who holds a power to direct is presumptively a fiduciary who is required to  
1163 act in good faith with regard to the purposes of the trust and the interests of the beneficiaries.  
1164 The holder of a power to direct shall be liable for any loss that results from a breach of a  
1165 fiduciary duty.

1166 Section 809. Control and protection of trust property

1167 A trustee shall take reasonable steps to take control of and protect the trust property.

1168 Section 810. Recordkeeping and identification of trust property

1169 (a) A trustee shall keep adequate records of the administration of the trust.

1170 (b) A trustee shall keep trust property separate from the trustee's own property.

1171 (c) A trustee may invest as a whole, the property of 2 or more separate trusts, if the  
1172 trustee maintains records clearly indicating the respective interests.

1173 Section 811. Enforcement and defense of claims

1174 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims  
1175 against the trust.

1176 Section 812. Collecting trust property

1177 A trustee shall take reasonable steps to compel a former trustee or other person to deliver  
1178 trust property to the trustee and to redress a breach of trust known to the trustee to have been  
1179 committed by a former trustee.

1180 Section 813. Duty to inform and report

1181 (a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about  
1182 the administration of the trust. Unless unreasonable under the circumstances, a trustee shall  
1183 promptly respond to a qualified beneficiary's request for information related to the  
1184 administration of the trust.

1185 (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable,  
1186 whichever is later, the trustee shall inform, in writing, the qualified beneficiaries of the trustee's  
1187 name and address. The information shall be delivered or sent by ordinary first class mail.

1188 (c) A trustee shall send an account to the distributees and permissible distributees of trust  
1189 income or principal and to other qualified beneficiaries who request it, at least annually and at  
1190 the termination of the trust. The account of trust income and principal may be formal or  
1191 informal, but shall include information relating to the trust property, liabilities, receipts and  
1192 disbursements, including the amount of the trustee's compensation, a listing of the trust assets  
1193 and, if feasible, their respective market values.

1194 (d) A beneficiary may waive the right to a trustee's account of trust income or principal  
1195 or other information otherwise required to be furnished under this section. A beneficiary, with  
1196 respect to future accounts and other information, may withdraw a waiver previously given. A  
1197 waiver of a trustee's account or other information shall not relieve the trustee from accountability  
1198 and potential liability for matters that the account or other information would have disclosed.

1199 Section 814. Discretionary powers; tax savings

1200 (a) Notwithstanding the broad discretion granted to a trustee in the terms of the trust,  
1201 including the use of such terms as "absolute", "sole" or "uncontrolled", the trustee shall exercise

1202 a discretionary power in good faith and in accordance with the terms and purposes of the trust  
1203 and the interests of the beneficiaries.

1204 (b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a  
1205 rule in this subsection shall not apply, the following rules shall apply:

1206 (1) a person other than a settlor, who is a beneficiary and trustee of a trust, that  
1207 confers on the trustee a power to make discretionary distributions to or for the trustee's personal  
1208 benefit may exercise the power only in accordance with an ascertainable standard; and

1209 (2) a trustee shall not exercise a power to make discretionary distributions to  
1210 satisfy a legal obligation of support that the trustee personally owes another person.

1211 (c) A power that is limited or prohibited by subsection (b) may be exercised by a  
1212 majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If  
1213 the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary  
1214 with authority to exercise the power.

1215 (d) Subsection (b) shall not apply to:

1216 (1) a power held by the settlor's spouse who is the trustee of a trust for which a  
1217 marital deduction was previously allowed; or

1218 (2) any trust during any period that the trust may be revoked or amended by its  
1219 settlor.

1220 Section 815. General powers of trustee

1221 (a) A trustee, without authorization by the court, may exercise:

1222 (1) powers conferred by the terms of the trust; or

1223 (2) except as limited by the terms of the trust:

1224 (i) all powers over the trust property which an unmarried competent  
1225 owner has over individually owned property;

1226 (ii) any other powers appropriate to achieve the proper investment,  
1227 management and distribution of the trust property; and

1228 (iii) any other powers conferred by this chapter.

1229 (b) The exercise of a power shall be subject to the fiduciary duties prescribed by this  
1230 article.

1231 Section 816. Specific powers of trustee

1232 Without limiting the authority conferred by section 815, a trustee may:

1233 (1) collect trust property and accept or reject additions to the trust property from a  
1234 settlor or any other person;

1235 (2) acquire or sell property, for cash or on credit, at public or private sale;

1236 (3) exchange, partition or otherwise change the character of trust property;

1237 (4) deposit trust money in an account in a regulated financial service institution;

1238 (5) borrow money, with or without security, and mortgage or pledge trust property for a  
1239 period within or extending beyond the duration of the trust;

1240           (6) with respect to an interest in a proprietorship, partnership, limited liability company,  
1241 business trust, corporation or other form of business or enterprise, continue the business or other  
1242 enterprise and take any action that may be taken by shareholders, members or property owners,  
1243 including merging, dissolving or otherwise changing the form of business organization or  
1244 contributing additional capital;

1245           (7) with respect to stocks or other securities, exercise the rights of an absolute owner,  
1246 including the right to:

1247                   (i) vote, or give proxies to vote, with or without power of substitution or enter  
1248 into or continue a voting trust agreement;

1249                   (ii) hold a security in the name of a nominee or in other form without disclosure  
1250 of the trust so that title may pass by delivery;

1251                   (iii) pay calls, assessments and other sums chargeable or accruing against the  
1252 securities and sell or exercise stock subscription or conversion rights; and

1253                   (iv) deposit the securities with a depository or other regulated financial service  
1254 institution;

1255           (8) with respect to an interest in real property, construct or make ordinary or  
1256 extraordinary repairs to, alterations to or improvements in, buildings or other structures,  
1257 demolish improvements, raze existing or erect new party walls or buildings, subdivide or  
1258 develop land, dedicate land to public use or grant public or private easements and make or vacate  
1259 plats and adjust boundaries;



1260           (9) enter into a lease for any purpose as lessor or lessee, including a lease or other  
1261 arrangement for exploration and removal of natural resources, with or without the option to  
1262 purchase or renew, for a period within or extending beyond the duration of the trust;

1263           (10) grant an option involving a sale, lease or other disposition of trust property or  
1264 acquire an option for the acquisition of property, including an option exercisable beyond the  
1265 duration of the trust, and exercise an option so acquired;

1266           (11) insure the property of the trust against damage or loss and insure the trustee, the  
1267 trustee's agents and beneficiaries against liability arising from the administration of the trust;

1268           (12) abandon or decline to administer property of no value or of insufficient value to  
1269 justify its collection or continued administration;

1270           (13) with respect to possible liability for violation of environmental law:

1271                   (i) inspect or investigate property the trustee holds or has been asked to hold, or  
1272 property owned or operated by an organization in which the trustee holds or has been asked to  
1273 hold an interest, for the purpose of determining the application of environmental law with respect  
1274 to the property;

1275                   (ii) take action to prevent, abate or otherwise remedy any actual or potential  
1276 violation of any environmental law affecting property held directly or indirectly by the trustee,  
1277 whether taken before or after the assertion of a claim or the initiation of governmental  
1278 enforcement;

1279                   (iii) decline to accept property into trust or disclaim any power with respect to  
1280 property that is or may be burdened with liability for violation of environmental law;

1281                   (iv) compromise claims against the trust which may be asserted for an alleged  
1282 violation of environmental law; and

1283                   (v) pay the expense of any inspection, review, abatement or remedial action to  
1284 comply with environmental law;

1285           (14) pay or contest any claim, settle a claim by or against the trust and release, in whole  
1286 or in part, a claim belonging to the trust;

1287           (15) pay taxes, assessments, compensation of the trustee and of employees and agents of  
1288 the trust and other expenses incurred in the administration of the trust;

1289           (16) exercise elections with respect to federal, state and local taxes;

1290           (17) select a mode of payment under any employee benefit or retirement plan, annuity or  
1291 life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to  
1292 indemnification for expenses and against liabilities and take appropriate action to collect the  
1293 proceeds;

1294           (18) make loans out of trust property, including loans to a beneficiary on terms and  
1295 conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee  
1296 has a lien on future distributions for repayment of those loans;

1297           (19) pledge trust property to guarantee loans made by others to the beneficiary;

1298           (20) appoint a trustee to act in another jurisdiction with respect to trust property located  
1299 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the  
1300 appointing trustee, require that the appointed trustee furnish security and remove any trustee so  
1301 appointed;

1302           (21) pay an amount distributable to a beneficiary who is under a legal disability or who  
1303 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or  
1304 applying it for the beneficiary's benefit, or by:

1305                   (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a  
1306 conservator, the beneficiary's guardian;

1307                   (ii) paying it to the beneficiary's custodian under chapter 201A or custodial  
1308 trustee under part 5 of Article VII of chapter 190B and, for that purpose, creating a custodianship  
1309 or custodial trust;

1310                   (iii) if the trustee does not know of a conservator, guardian, custodian or  
1311 custodial trustee, paying it to an adult relative or other person having legal or physical care or  
1312 custody of the beneficiary, to be expended on the beneficiary's behalf; or

1313                   (iv) managing it as a separate fund on the beneficiary's behalf, subject to the  
1314 beneficiary's continuing right to withdraw the distribution;

1315           (22) on distribution of trust property or the division or termination of a trust, make  
1316 distributions in divided or undivided interests, allocate particular assets in proportionate or  
1317 disproportionate shares, value the trust property for those purposes and adjust for resulting  
1318 differences in valuation;

1319           (23) resolve a dispute concerning the interpretation of the trust or its administration by  
1320 mediation, arbitration or other procedure for alternative dispute resolution;

1321           (24) prosecute or defend an action, claim or judicial proceeding in any jurisdiction to  
1322 protect trust property and the trustee in the performance of the trustee's duties;

1323           (25) sign and deliver contracts and other instruments that are useful to achieve or  
1324 facilitate the exercise of the trustee's powers;

1325           (26) establish or continue title-holding entities, including so-called "nominee trusts", for  
1326 the purposes of holding legal title to any portion or all of the trust property without the need to  
1327 record or make public the terms of the trust; and

1328           (27) on termination of the trust, exercise the powers appropriate to wind up the  
1329 administration of the trust and distribute the trust property to the persons entitled to it.

1330           Section 817. Distribution upon termination

1331           (a) Upon termination or partial termination of a trust, the trustee may send to the  
1332 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed  
1333 distribution shall terminate if the beneficiary does not notify the trustee of an objection within 30  
1334 days after the proposal was sent, but only if the proposal: (i) informed the beneficiary of the right  
1335 to object and of the time allowed for objection; and (ii) provided the beneficiary with sufficient  
1336 material facts to enable the beneficiary to evaluate the proposal.

1337           (b) Upon the occurrence of an event terminating or partially terminating a trust, the  
1338 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,  
1339 subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses  
1340 and taxes.

1341                               ARTICLE 9 [Reserved]

1342                               ARTICLE 10

1343           LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH  
1344 TRUSTEE

1345           Section 1001. Remedies for breach of trust

1346           (a) A violation by a trustee of a duty the trustee owes to a beneficiary shall be a breach of  
1347 trust.

1348           (b) To remedy a breach of trust that has occurred or may occur, the court may:

1349                   (1) compel the trustee to perform the trustee's duties;

1350                   (2) enjoin the trustee from committing a breach of trust;

1351                   (3) compel the trustee to redress a breach of trust by paying money, restoring  
1352 property or other means;

1353                   (4) order a trustee to account;

1354                   (5) appoint a special fiduciary to take possession of the trust property and  
1355 administer the trust;

1356                   (6) suspend the trustee;

1357                   (7) remove the trustee;

1358                   (8) reduce or deny compensation to the trustee;

1359                   (9) subject to section 1012, void an act of the trustee, impose a lien or a  
1360 constructive trust on trust property or trace trust property wrongfully disposed of and recover the  
1361 property or its proceeds; or

1362 (10) order any other appropriate relief.

1363 Section 1002. [Reserved]

1364 Section 1003. [Reserved]

1365 Section 1004. [Reserved]

1366 Section 1005. Limitation of action against trustee

1367 (a) Unless previously barred by adjudication, consent or limitation, any claim against a  
1368 trustee for breach of trust shall be barred as to any beneficiary who has received a final account  
1369 or other statement fully disclosing the matter and showing termination of the trust relationship  
1370 between the trustee and the beneficiary, unless a proceeding to assert the claim is commenced  
1371 within 6 months after receipt of the final account or statement. Any claim against a trustee for  
1372 breach of trust shall be barred in any event and notwithstanding lack of full disclosure, against a  
1373 trustee who has issued a final account or statement received by the beneficiary and has informed  
1374 the beneficiary of the location and availability of records for examination by the beneficiary after  
1375 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult,  
1376 it is received by the beneficiary personally or if, being a minor or disabled person, it is received  
1377 by the beneficiary's representative as described in article 3.

1378 (b) Where a claim is not barred by subsection (a), a beneficiary may not commence a  
1379 proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or  
1380 a representative of the beneficiary knew or reasonably should have known of the existence of a  
1381 potential claim for breach of trust.

1382 (c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for  
1383 breach of trust must be commenced within 5 years after the first to occur of:

1384 (1) the removal, resignation or death of the trustee;

1385 (2) the termination of the beneficiary's interest in the trust; or

1386 (3) the termination of the trust.

1387 Section 1006. Reliance on trust instrument

1388 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the  
1389 trust instrument shall not be liable to a beneficiary for a breach of trust to the extent the breach  
1390 resulted from the reliance.

1391 Section 1007. Event affecting administration or distribution

1392 If the happening of an event or change of status, including, but not limited to: birth,  
1393 adoption, marriage, divorce, performance of educational requirements or death affects the  
1394 administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain  
1395 the happening of the event or change of status shall not be liable for a loss resulting from the  
1396 trustee's lack of knowledge.

1397 Section 1008. Exculpation of trustee

1398 (a) A term of a trust relieving a trustee of liability for breach of trust shall be  
1399 unenforceable to the extent that it:

1400 (1) relieves the trustee of liability for breach of trust committed in bad faith or  
1401 with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

1402 (2) was inserted as the result of an abuse by the trustee of a fiduciary or  
1403 confidential relationship to the settlor.

1404 (b) An exculpatory term drafted or caused to be drafted by the trustee may be invalid as  
1405 an abuse of a fiduciary or confidential relationship unless the trustee proves that its existence and  
1406 contents were adequately communicated to the settlor.

1407 Section 1009. Beneficiary's consent, release or ratification

1408 A trustee shall not be liable to a beneficiary for breach of trust if the beneficiary, while  
1409 having capacity, in writing, consented to the conduct constituting the breach, released the trustee  
1410 from liability for the breach or ratified the transaction constituting the breach, unless:

1411 (1) the consent, release or ratification of the beneficiary was induced by improper  
1412 conduct of the trustee; or

1413 (2) at the time of the consent, release or ratification, the beneficiary did not know of the  
1414 material facts relating to the breach.

1415 Section 1010. Limitation on personal liability of trustee

1416 (a) Except as otherwise provided in the contract, a trustee shall not be personally liable  
1417 on a contract properly entered into in the trustee's fiduciary capacity in the course of  
1418 administering the trust if the trustee, in the contract, disclosed the fiduciary capacity.

1419 (b) A trustee shall be personally liable for torts committed in the course of administering  
1420 a trust or for obligations arising from ownership or control of trust property, including liability  
1421 for violation of environmental law, only if the trustee is personally at fault.



1422 (c) A claim based on a contract entered into by a trustee in the trustee's fiduciary  
1423 capacity, on an obligation arising from ownership or control of trust property or on a tort  
1424 committed in the course of administering a trust, may be asserted in a judicial proceeding against  
1425 the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for  
1426 the claim.

1427 Section 1011. Interest as general partner

1428 (a) Except as otherwise provided in subsection (c) or unless personal liability is imposed  
1429 in the contract, a trustee who holds an interest as a general partner, in a general or limited  
1430 partnership, shall not be personally liable on a contract entered into by the partnership after the  
1431 trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a  
1432 statement previously filed under chapter 108A or chapter 109.

1433 (b) Except as otherwise provided in subsection (c), a trustee who holds an interest as a  
1434 general partner shall not be personally liable for torts committed by the partnership or for  
1435 obligations arising from ownership or control of the interest unless the trustee is personally at  
1436 fault.

1437 (c) The immunity provided by this section shall not apply if an interest in the partnership  
1438 is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or 1  
1439 or more of the trustee's descendants, siblings or parents, or the spouse of any of them.

1440 (d) If the trustee of a revocable trust holds an interest as a general partner, the settlor  
1441 shall be personally liable for contracts and other obligations of the partnership as if the settlor  
1442 were a general partner.

1443           Section 1012. Protection of person dealing with trustee

1444           (a) A person other than a beneficiary who in good faith assists a trustee or who in good  
1445 faith and for value deals with a trustee, without knowledge that the trustee is exceeding or  
1446 improperly exercising the trustee's powers shall be protected from liability as if the trustee  
1447 properly exercised the power.

1448           (b) A person other than a beneficiary who in good faith deals with a trustee shall not be  
1449 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1450           (c) A person who in good faith delivers assets to a trustee need not ensure their proper  
1451 application.

1452           (d) A person other than a beneficiary who in good faith assists a former trustee or who in  
1453 good faith and for value deals with a former trustee, without knowledge that the trusteeship has  
1454 terminated shall be protected from liability as if the former trustee were still a trustee.

1455           (e) Comparable protective provisions of other laws relating to commercial transactions  
1456 or transfer of securities by fiduciaries shall prevail over the protection provided by this section.

1457           Section 1013. Certification of trust

1458           (a) Instead of furnishing a copy of the trust instrument to a person other than a  
1459 beneficiary, the trustee may furnish to the person a certification of trust containing the following  
1460 information:

1461                   (1) that the trust exists and the date the trust instrument was executed;

1462                   (2) the identity of the settlor;

1463 (3) the identity and address of the currently acting trustee;  
1464 (4) the powers of the trustee;  
1465 (5) the revocability or irrevocability of the trust and the identity of any person  
1466 holding a power to revoke the trust;

1467 (6) the authority of co-trustees to sign or otherwise authenticate and whether all  
1468 or less than all are required in order to exercise powers of the trustee;

1469 (7) the trust's taxpayer identification number; and

1470 (8) the manner of taking title to trust property.

1471 (b) A certification of trust may be signed or otherwise authenticated by any trustee.

1472 (c) A certification of trust shall state that the trust has not been revoked, modified or  
1473 amended in any manner that would cause the representations contained in the certification of  
1474 trust to be incorrect.

1475 (d) A certification of trust need not contain the dispositive terms of a trust.

1476 (e) A recipient of a certification of trust may require the trustee to furnish copies of those  
1477 excerpts from the original trust instrument and later amendments which designate the trustee and  
1478 confer upon the trustee the power to act in the pending transaction.

1479 (f) A person who acts in reliance upon a certification of trust without knowledge that the  
1480 representations contained in the certification are incorrect shall not be liable to any person for so  
1481 acting and may assume without inquiry the existence of the facts contained in the certification.

1482 Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or  
1483 part of the trust instrument is held by the person relying upon the certification.

1484 (g) A person who in good faith enters into a transaction in reliance upon a certification of  
1485 trust may enforce the transaction against the trust property as if the representations contained in  
1486 the certification were correct.

1487 (h) A person making a demand for the trust instrument, in addition to a certification of  
1488 trust or excerpts, shall be liable for damages if the court determines that the person did not act in  
1489 good faith in demanding the trust instrument.

1490 (i) This section shall not limit the right of a person to obtain a copy of the trust  
1491 instrument in a judicial proceeding concerning the trust.

1492 SECTION 55. Section 7 of chapter 210 of the General Laws is hereby repealed.

1493 SECTION 56. Section 8 of chapter 210 of the General Laws is hereby repealed.

1494 SECTION 57. Section 21 of chapter 246 of the General Laws is hereby repealed.

1495 SECTION 58. Chapter 262 of the General Laws is hereby amended by striking out  
1496 section 40, as appearing in the 2010 Official Edition, and inserting the place thereof the  
1497 following section:-

1498 Section 40. The fees of the registers of the probate and family court, shall be as follows:

1499 for the filing of an amended or substituted account, for a petition for the allowance of an  
1500 account, \$75;

1501           for the filing of an account, including a common trust fund account, if the gross value  
1502 accounted for in Schedule A of the account is \$1,000 or less, no fee; if the gross value is more  
1503 than \$1,000 but not more than \$10,000, \$75; provided, however, that the fees shall not exceed  
1504 \$170 regardless of the time covered by the account; if the gross value is \$10,000 or more but not  
1505 more than \$100,000, \$100 for each year or fraction thereof covered by the account; if the gross  
1506 value is more than \$100,000 but not more than \$500,000, \$150 for each year or fraction thereof  
1507 covered by the account; if the gross value is more than \$500,000 but not more than \$1,000,000,  
1508 \$200 for each year or fraction thereof covered by the account; if the gross value is more than  
1509 \$1,000,000 but not more than \$2,000,000, \$400 for each year or fraction thereof covered by the  
1510 account; if the gross value is more than \$2,000,000 but not more than \$5,000,000, \$750 for each  
1511 year or fraction thereof covered by the account; if the gross value is more than \$5,000,000 but  
1512 not more than \$7,500,000, \$1500 for each year or fraction thereof covered by the account; if the  
1513 gross value is more than \$7,500,000 but not more than \$10,000,000, \$2500 for each year or  
1514 fraction thereof covered by the account; if the gross value is more than \$10,000,000, \$3500 for  
1515 each year or fraction thereof covered by the account;

1516           for the filing of petition for adoption, \$100;

1517           for the filing of a subsequent bond, demand for sureties, for the filing of a petition for  
1518 new bond, discharge of surety, modification of bond, reduction of bond, \$75;

1519           for the filing of a motion for change of name, in divorce actions during nisi period, \$100;

1520           for the filing of a petition for change of name, \$150;

1521           for the filing of a foreign conservator sworn statement, \$75;

1522 for the removal of a fiduciary, \$100;

1523 for the filing of a petition to expand, modify or limit the powers of a conservator, \$150;

1524 for the filing of a petition for the appointment of a conservator or for single transaction,

1525 \$240;

1526 for the issuance of a contempt summons, \$5;

1527 for the entry of an action seeking the post-judgment removal of a child from the

1528 commonwealth, \$50;

1529 for the filing of a complaint for alimony, enforcement of foreign alimony decree, separate

1530 support, \$100;

1531 for the filing of an action to convey land as if sole, \$150;

1532 for marriage of a minor and marriage without delay, \$180;

1533 for the filing of a complaint for affirmation of marriage, annulment, divorce, \$200;

1534 for the filing of an action for modification relative to child support, custody and

1535 visitation, except for those actions filed by the IV-D agency for which there is no filing fee, \$50;

1536 for the filing of a complaint to establish paternity or for custody-support-visitation,

1537 except for those actions filed by the IV-D agency for which there is no filing fee, \$100;

1538 for the filing of a complaint to modify a foreign custody or support decree pursuant to

1539 section 29 of chapter 208, except for those complaints filed by the IV-D agency for which there

1540 is no filing fee, \$100;

1541 for the filing of an action for the modification of a judgment relative to all non-child  
1542 related issues, \$150;

1543 for the issuance of an injunction or temporary restraining order, \$100;

1544 for the filing of a complaint in equity related to adoption, separate support or the custody  
1545 or support of minors, \$100;

1546 for the filing of a complaint in equity, except such as relates to adoption, separate support  
1547 or the custody or support of minors, \$240;

1548 for the filing of a petition to partition, to terminate a trust, for specific performance, for  
1549 filing a complaint to correct birth record, to restrain a personal representative, to terminate a  
1550 trust, \$240;

1551 for the issuance of a subsequent letter, \$25;

1552 for care of a burial lot, erection of monument, \$60;

1553 for the filing of a petition to render an inventory or account, petition for approval of a  
1554 compromise, determination of value, order of complete settlement, for the filing of a closing  
1555 statement, foreign personal representative sworn statement, small estate closing statement, \$75;

1556 for the filing of a will for safekeeping, \$75; provided, however, that no additional fee  
1557 shall be charged for filing a will in substitution of a will previously filed and withdrawn;

1558 for the filing of a petition for public administration, for formal removal of personal  
1559 representative, \$100;

1560 for the filing of a petition for counsel fees, to vacate a formal order, for a general probate  
1561 petition, for a general petition, except such as relates to custody or support of minors, for a  
1562 representation of insolvency, \$150;

1563 for the filing of a petition to appoint a receiver of the estate of an absentee, for leave to  
1564 deposit certain funds, for statement of voluntary administration, \$200;

1565 for the filing of a declaration of common trust fund, \$400;

1566 for the filing of a petition to appoint a special personal representative, to appoint a  
1567 trustee, for a general trust petition, for a formal probate of will, adjudication of intestacy and  
1568 appointment of personal representative, for formal appointment of successor personal  
1569 representative, for supervised administration, for an informal probate of will and/or appointment  
1570 of personal representative, for informal appointment of successor personal representative, \$400;

1571 for the filing of a petition for leave to lease real estate, for leave to mortgage real estate,  
1572 \$75;

1573 for the filing of a petition or application for sale of real or personal estate by any  
1574 fiduciary if the gross value accounted for is \$100,000 or less, \$100; if the gross value is more  
1575 than \$100,000 but not more than \$250,000, \$250; if the gross value is more than \$250,000 but  
1576 not more than \$500,000, \$500; if the gross value is more than \$500,000 but not more than  
1577 \$1,000,000, \$750; if the gross value is more than \$1,000,000, \$1000; and

1578 for the amendment of record except such as relates to separate support or the custody or  
1579 support of minors, \$60;



1580           Notwithstanding the provisions of this section, no fee shall be charged for the issuance of  
1581 a temporary restraining order against a spouse related to a complaint for divorce or separate  
1582 support, for the filing of a complaint for support of spouse or child pursuant to section 32F of  
1583 chapter 209, for the filing of a complaint for abuse protection, for the filing of a petition for  
1584 disabled abuse, elderly abuse, dispense with consent to adoption, the appointment of a guardian,  
1585 the resignation or termination of a guardian or conservator, the resignation of any fiduciary, to  
1586 expand, modify or limit the powers of a guardian, grandparent visitation, payment of deposits,  
1587 for leave to bring suit on a bond or for registration of foreign custody decree.

1588           SECTION 59. Section 5 of chapter 521 of the acts of 2008 is hereby repealed.

1589           SECTION 60. Section 15 of chapter 521 of the acts of 2008 is hereby repealed.

1590           SECTION 61. Said chapter 521 is hereby further amended by inserting after section 27  
1591 the following section:-

1592           Section 27A. Section 3 of chapter 203A of the General Laws is hereby amended by  
1593 striking out the third sentence and inserting in place thereof the following sentence:- A  
1594 proceeding for the allowance of an account brought pursuant to this chapter in the probate and  
1595 family court department of the trial court may be initiated by filing a petition and giving notice  
1596 as provided under sections 1-401 and 1-403 of chapter 190B and section 1-404 of said chapter  
1597 190B shall apply to such proceeding.

1598           SECTION 62. Section 39 of chapter 521 of the acts of 2008 is hereby repealed.

1599           SECTION 63. (a) Except as otherwise provided in this act:

1600                   (1) this act shall apply to all trusts created before, on or after the effective date of  
1601 this act;

1602                   (2) this act shall apply to all judicial proceedings concerning trusts commenced  
1603 on or after the effective date;

1604                   (3) an action taken before the effective date of this act shall not be affected by  
1605 this act.

1606               (b) If a right is acquired, extinguished or barred upon the expiration of a prescribed  
1607 period that has commenced to run under any other statute before the effective date of this act,  
1608 that statute shall continue to apply to the right even if it has been superseded.

1609               SECTION 64. Subsection (h) of section 408 of chapter 203E of the General Laws shall  
1610 not apply to a trust created under an instrument executed before the effective date of this act.

1611               SECTION 65. Subsection (a) of section 502 of said chapter 203E shall not apply to  
1612 spendthrift provisions in a trust created under an instrument executed before the effective date of  
1613 this act.

1614               SECTION 66. Subsection (a) of section 602 of said chapter 203E shall not apply to trust  
1615 instruments executed before the effective date of this act.

1616               SECTION 67. Subsection (a) of section 703 of said chapter 203E shall not apply to trust  
1617 instruments executed before the effective date of this act.

1618               SECTION 68. Subsection (c) of section 5-504 of chapter 190B of the General Laws shall  
1619 apply to transactions under powers of attorney occurring before, on or after the effective date of

1620 this act, except with respect to a transaction that has been invalidated by a final decision of a  
1621 court of competent jurisdiction prior to such effective date.

1622 SECTION 69. This act shall take effect on March 31, 2012.